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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 OMARI NAEEM BEY,

8 Plaintiff(s),

Case No. 2:19-CV-221 JCM (VCF)

9 v.

ORDER

10 STATE OF NEVADA, et al.,

11 Defendant(s).

12
13 Presently before the court is defendants State of Nevada, ex rel. Nevada Department of
14 Corrections, Greg Cox, and Dwight Neven’s (collectively “the state defendants”) motion for
15 order to show cause why the complaint should not be dismissed for lack of service. (ECF No.
16 41). Plaintiff Omari Naeem Bey (“plaintiff”) filed a response (ECF No. 43), to which the state
17 defendants replied (ECF No. 44).

18 **I. Background**

19 The instant case comes before the court for a second time regarding ineffective service of
20 process on the state defendants. Plaintiff brought this action on February 5, 2019, alleging
21 multiple sexual-assault and battery claims during his incarceration at High Desert State Prison.
22 (ECF No. 1). Plaintiffs attempted to serve state defendants through certified mail, receipt of
23 which was acknowledged on April 16, 2019. (ECF Nos. 17; 18; 20). The state defendants
24 moved to dismiss plaintiff’s complaint for failure to comply with Federal Rule of Civil
25 Procedure 4(m). (ECF No. 25). The court denied the motion and ordered plaintiff to serve the
26 state defendants in compliance with Rule 4 and/or Nevada law within thirty (30) days. (ECF No.
27 34).

1 However, plaintiff served the Nevada secretary of state rather than the attorney general.
2 (ECF Nos. 40; 41). As a result, plaintiff has not properly served the state defendants. The state
3 defendants moved this court for an order to show cause why the complaint should not be
4 dismissed for lack of service. (ECF No. 41).

5 **II. Legal Standard**

6 Rule 4(m) provides the deadline for service and reads:

7 If a defendant is not served within 90 days after the complaint is
8 filed, the court—on motion or on its own after notice to the
9 plaintiff—must dismiss the action without prejudice against that
10 defendant or order that service be made within a specified time.
 But if the plaintiff shows good cause for the failure, the court must
 extend the time for service for an appropriate period.

11 Fed. R. Civ. P. 4.

12 Courts have broad “discretion to extend time for service under Rule 4(m),” *Efaw v.*
13 *Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007), and may extend time for service even after the
14 Rule 4(m) deadline has expired, *Mann v. Am. Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003). In
15 addition, the Federal Rules of Civil Procedure “should be construed, administered, and employed
16 by the court and the parties to secure the just, speedy, and inexpensive determination of every
17 action and proceeding.” Fed. R. Civ. P. 1.

18 **III. Discussion**

19 Here, plaintiff did not serve the attorney general. Instead, plaintiff’s process server—
20 Junes Legal Service—served Rhonda Twin, a Nevada secretary of state employee. (ECF No. 41
21 at 3). The Nevada Secretary of State is located directly across the street from the Attorney
22 General. (ECF Nos. 41 at 3; 43 at 5). Plaintiff represents that he gave the correct address for the
23 Attorney General to Junes Legal Service. (ECF No. 43 at 5).

24 Ordinarily, Junes Legal Service’s error would be “good cause” to extend the time for
25 plaintiff to serve the State of Nevada, ex rel. Nevada Department of Corrections. Fed. R. Civ. P.
26 4. However, plaintiff was also required to serve the head of the relevant administrative agency,
27 the Department of Corrections. The court noted plaintiff’s failure to do so in its last order. (ECF
28 No. 34 at 5). Nonetheless, plaintiff makes no showing that he attempted to serve the head of the

1 administrative agency, the Nevada Department of Corrections. Thus, the court grants the state
2 defendants' motion as to the State of Nevada, ex rel. Nevada Department of Corrections.

3 Regarding service of process on individuals, the Ninth Circuit has held as follows:

4 Defendants must be served in accordance with Rule 4(d) of the
5 Federal Rules of Civil Procedure, or there is no personal
6 jurisdiction. Rule 4(a) provides that defendants must be personally
7 served or served in compliance with alternatives listed in 4(d) (6)
8 or 4(d) (7). Neither actual notice nor simply naming the person in
9 the caption of the complaint will subject defendants to personal
10 jurisdiction if service was not made in substantial compliance
11 with Rule 4. Serving an entity . . . will not automatically confer
12 personal jurisdiction over individual defendants in any capacity.

13 *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 982) (internal citations omitted).

14 In this case, plaintiff named Greg Cox and Dwight Neven in their individual capacities.
15 Plaintiff can serve Cox and Neven one of three ways. First, plaintiff may serve Cox and Neven
16 individually. Fed. R. Civ. P. 4(e); Nev. R. Civ. P. 4.2(a). Second, plaintiff can serve Cox and
17 Neven "by leaving a copy of the summons and complaint at the individual's dwelling or usual
18 place of abode with a person of suitable age and discretion who currently resides therein and is
19 not an adverse party to the individual being served." *Id.* Finally, plaintiff can serve Cox and
20 Neven "by delivering a copy of the summons and complaint to an agent authorized by
21 appointment or by law to receive service of process." *Id.*

22 But plaintiff did not serve Greg Cox or Dwight Neven personally. Plaintiff did not try
23 leave a copy of the summons and complaint with someone of suitable age and discretion at their
24 place of abode. Plaintiff did not serve Cox and Neven by delivering a copy of the summons and
25 complaint to an agent authorized to receive service of process. Instead, plaintiff attempted to
26 serve Greg Cox and Dwight Neven—both in their individual capacities—by serving the State of
27 Nevada. Nor does plaintiff provide any indication of why he failed to properly effect service on
28 the individual state defendants.

Because plaintiff failed to show good cause for his failure to serve Cox and Neven, the
court has two options. The court can either dismiss the action without prejudice against those
defendants, or the court can order that service be made within a specified time. The court
already gave plaintiff a second opportunity to properly serve—or at least attempt to properly

1 serve—the individual defendants. (ECF No. 34). Thus, the court dismisses the claims against
2 Cox and Neven.

3 The court notes that the statute of limitations for plaintiff’s claim has run. (ECF No. 30
4 at 2 (plaintiff argues that “the statute of limitations has run on this matter and was about to run at
5 the time the [c]omplaint was filed”). Therefore, plaintiff’s claims against the state
6 defendants are dismissed with prejudice.

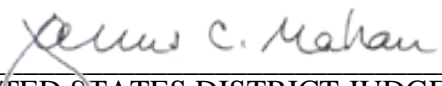
7 **IV. Conclusion**

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the state defendants’
10 motion for order to show cause (ECF No. 41) be, and the same hereby is, GRANTED.

11 IT IS FURTHER ORDERED that plaintiff’s claims against the State of Nevada, ex rel.
12 Department of Correction, Greg Cox and Dwight Neven be, and the same hereby are,
13 DISMISSED with prejudice.

14 DATED November 26, 2019.

15 
UNITED STATES DISTRICT JUDGE